

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FRANK JARVIS ATWOOD,

Applicant,

v.

DAVID SHINN, Director,

Respondent.

No. 22-70084

ORDER

Filed May 31, 2022

Before: S.R. THOMAS, Capital Case Coordinator and
Circuit Judge.

ORDER

On May 27, 2022, the three judge panel issued an order denying the application for leave to file a second or successive habeas petition in the district court. Pursuant to 28 U.S.C. § 2244(b)(3)(E), parties are not permitted to file a petition for rehearing or rehearing en banc as to the panel's action. However, rehearing en banc may be granted if a judge sua sponte requests a vote on whether to rehear the panel's order en banc. *See Thompson v. Calderon*, 151 F.3d 918, 922 (9th Cir. 1998) (en banc).

Pursuant to the rules applicable to capital cases when an execution date has been scheduled, a deadline was established

for any judge to request a vote on whether the panel's order denying the application should be reheard en banc. No judge requested a vote on whether the order should be reheard en banc within the established time period. Therefore, en banc proceedings with respect to the order are concluded. The panel's order denying the application is the final order of this Court pertaining to the application.